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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,530	11/26/2001	William Frederick Ashworth	0074-450511GWW	7087

110 7590 11/03/2005

DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

EXAMINER

BRINICH, STEPHEN M

ART UNIT	PAPER NUMBER
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2624

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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09/936530

EXAMINER

ART UNIT	PAPER
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20051026

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Office Action Summary

Application No.

09/936,530

Applicant(s)ASHWORTH, WILLIAM
FREDERICK**Examiner**

Stephen M. Brinich

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 8-12, 18-20 and 22-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 2624

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Response filed 8/15/05, with respect to the rejection of claims 1-5, 8-11, & 16-17 under 35 USC §102, the rejection of claims 6 & 20 under 35 USC §112, and the objections to claims 7, 12-15, & 21 have been fully considered and are persuasive. Therefore, these rejections and objections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 USC §101.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1-7 & 13-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-7 & 13-17 are drawn to non-functional descriptive material. MPEP 2106.IV.B.1(a) (Nonfunctional Descriptive Material) states:

Descriptive material that cannot exhibit any functional interrelationship with the way in which computing processes are performed does not constitute a statutory process, machine, manufacture or composition of matter and should be rejected under 35 U.S.C. 101.

Art Unit: 2624

Where certain types of descriptive material, such as music, art, photographs and mere arrangements or compilations of facts or data, are merely stored so as to be read or outputted by a computer without creating any functional interrelationship, either as part of the stored data or as part of the computing process performed by the computer, then such descriptive material alone does not impart functionality either to the data as so structured, or to the computer.

For example, music is commonly sold to consumers in the form of a compact disc. In such cases, the know compact disc acts as nothing more than a carrier for nonfunctional descriptive material. The purely nonfunctional descriptive material cannot alone provide the practical application for the manufacture.

MPEP 2106.IV.B.1 (Nonstatutory Subject Matter) states:

When nonfunctional descriptive material is recorded on some computer-readable medium, it is not statutory since no requisite functionality is present to satisfy the practical application requirement.

Claims 1-7 & 13-17 currently recite a screen configuration. There is no functional relationship imparted by this data to a computing device. Therefore, the claim is drawn to non-functional descriptive material which is non-statutory per se. The fact that the claim recites a computer readable medium does not provide the utility (i.e., practical application in the

Art Unit: 2624

technological arts) required under 35 U.S.C. 101 for the manufacture.

Allowable Subject Matter

4. Claims 8-12, 18-20, & 22-24 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter:

As noted above, Applicant's arguments, see Response filed 8/15/05, with respect to the rejection of claims 1-5, 8-11, & 16-17 under 35 USC §102, the rejection of claims 6 & 20 under 35 USC §112, and the objections to claims 7, 12-15, & 21 have been fully considered and are persuasive.

Conclusion

6. Any inquiry concerning the contents of this communication or earlier communications from the examiner should be directed to Stephen M. Brinich at 571-272-7430.

Any inquiry relating to the status of this application or proceeding or any inquiry of a general nature concerning application processing should be directed to the Tech Center 2600 Customer Service center at 571-272-2600 or to the USPTO Contact Center at 800-786-9199 or 703-308-4357.


The examiner can normally be reached on weekdays 7:00-4:30, alternate Fridays off.

Art Unit: 2624

If attempts to contact the examiner and the Customer Service Center are unsuccessful, supervisor David Moore can be contacted at 571-272-7437.

Faxes pertaining to this application should be directed to the Tech Center 2600 official fax number, which is 571-273-8300 (as of July 15, 2005).

Hand-carried correspondence may be delivered to the Customer Service Window, located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

A handwritten signature in cursive script that reads "Stephen Brinich".

Stephen M Brinich
Examiner
Art Unit 2624

smb
October 27, 2005